



DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor  
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June 22, 2021

Mr. Steven Rosen  
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Governor's Office of Planning & Research

**June 23 2021**

**STATE CLEARINGHOUSE**

Subject: Western Meadows Subdivision, Mitigated Negative Declaration,  
SCH No. 2021050607, Napa County

Dear Mr. Rosen:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Western Meadows Subdivision (Project). CDFW is submitting comments on the MND to inform the City of Napa, as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, or a Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### PROJECT LOCATION AND ENVIRONMENTAL SETTING

The 7.56-acre Project site is located on the north side of an existing private driveway extending east from the north end of Borrette Lane, in the City of Napa, at approximately 38.313470°N, -122.347043°W. The Project site is 275 feet from the Rural/Urban Limit and is adjacent to a developed single-family subdivision on its east and north sides, large lot single-family houses on the south side, and a small vineyard and winery on the west and north sides. On the southern boundary of the parcel is Llama Creek, a tributary to Browns Valley Creek. Browns Valley Creek lies approximately 640 feet south of the Project site. Several wetlands and seeps occur on the northern portion of the property, and an on-stream reservoir is located upstream on Llama Creek approximately 3,465 feet from the Project site. Three vegetation communities occur on the Project site including: 1) non-native annual grassland

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dominated by harding grass (*Phalaris aquatica*), 2) California bay (*Umbellularia californica*) woodland, and 3) seasonal wetlands.

## **PROJECT DESCRIPTION**

The Project would develop a 12-lot subdivision. The existing access road would be extended to the north and have a cul-de-sac to allow access to lots that would be built to the west and east of the access road. The lots north of the cul-de-sac would be accessed by a 20-foot access easement, and there would also be a 20-foot access easement for Lots 2 and 13. A new storm drain outfall would be constructed into the bank of Llama Creek.

## **COMMENTS AND CONCERNS**

### ***Stream and Riparian Habitat Impacts***

The Project would include constructing a storm drain outfall and associated rock riprap into the bank of Llama Creek, and permanently impact approximately 26 linear feet of an ephemeral channel bisecting the parcel. The Project would need to notify CDFW per Fish and Game Code section 1602, subdivision (a)(1) prior to impacting Llama Creek and the ephemeral channel.

In California, over 90 percent of the riparian and floodplain vegetation has been lost to development, land conversion, and channelization projects, compared to historical levels. In Napa County, riparian woodlands and forests only cover approximately 2 percent of the total land area; and riparian areas in the West provide habitat for more species of birds than all other western vegetation combined (e.g., 80 percent of neotropical migrant species (i.e., songbirds) depend on riparian areas for nesting or migration) (Napa County Resource Conservation District). Therefore, permanent impacts to riparian habitat would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends the following mitigation measure:

*Permanent impacts to Llama Creek and the ephemeral drainage shall be mitigated by either on-site or offsite restoration within the same stream or watershed at a minimum 3:1 mitigation to impact ratio for the linear distance and acres permanently impacted. Temporary impacts shall be restored onsite at a 1:1 ratio. A restoration plan shall be prepared and implemented within the same year that Project construction is completed. The plan shall be prepared by a qualified biologist and shall include a minimum 80 percent survival and cover for success criteria, maintenance, and monitoring of plantings for five years. If success criteria are not met, replacement planting, maintenance, and monitoring shall be required for an additional five years.*

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### ***Oak Tree Removal***

The Project would remove two old-growth coast live oak trees (i.e., 18.5 and 21 inches in diameter). Due to the rapid and extensive land conversions in oak woodlands, savannas, and riparian habitat within Napa County, coupled with an apparent lack of regeneration of several species, CDFW is concerned about the long-term survival of native oaks. Fragmentation of oak habitats reduces their ability to provide the full range of ecological benefits, including maintenance of species diversity, as well as soil and watershed protection. Coast live oak (*Quercus agrifolia*) and old-growth oak trees (native oak tree that is greater than 15 inches in diameter) are of particular importance due to increased biological values and increased temporal loss. Therefore, CDFW considers the loss of oak woodland habitat to be potentially significant impact.

The MND Mitigation Measure IV-7 proposes a 4:1 replacement to removal ratio for oaks. However, this replacement ratio is inadequate because oak trees have slow growth rates, and it would take several decades for planted oaks to grow to a size that could provide the same ecological benefits that old-growth oaks provide.

To reduce impacts to less-than-significant, CDFW recommends revising Mitigation Measure IV-7 to require that the two old-growth oak trees be replaced at a 10:1 replacement to removal ratio. Trees shall be sourced using locally procured trees of the same species; and they shall be planted as close to the Project site as possible and maintained and monitored for a minimum of five years. Planted oak trees shall achieve an 80 percent survival rate after five years and annual monitoring reports shall be provided to the lead agency. If tree plantings have not achieved at least 80 percent survival after 5 years, new trees shall be planted and monitored for an additional 5 years to achieve 80 percent survival. Planted trees shall be able to survive the last two years of the minimum 5-year monitoring period without supplemental irrigation. CDFW recommends that cages be placed around planted oak trees if deer browse is a concern, and that weeding occur within and around caged oak trees until the trees become well-established. Once the oaks become a sufficient size to withstand deer browse, the cages shall be removed.

### ***Roosting Bats***

Mitigation Measure IV-3, as it relates to seasonal periods of bat activity, is incomplete. The measure should be revised to state that tree removal shall only be conducted between March 1 (or after evening temperatures rise above 45°F and/or no more than 0.5 inches of rainfall within 24 hours occurs) and April 15 (when females begin to give birth to young); and prior to winter torpor from September 1 to October 15 (before night temperatures fall below 45°F and when rains begin). Furthermore, Mitigation Measure IV-3 should specify that a qualified bat biologist, experienced with supervising tree removal using the 2-day phased technique, shall supervise Day 1 work (i.e., the removal of limbs that do not contain suitable bat roosting habitat).

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### ***Nesting Birds***

In addition to the requirements outlined in Mitigation Measure IV-2, to reduce potential impacts to less-than-significant, CDFW recommends that a qualified biologist monitor all active nests during construction each day for one week, and weekly thereafter until the nests are no longer active (i.e., to ensure that the buffer zones are adequate in avoiding nest disturbance). If the qualified biologist observes any bird behavior indicative of nest disturbance, the qualified biologist shall cease all work and CDFW shall be consulted with regarding appropriate avoidance and minimization measures to implement on site prior to resuming project activities. Lastly, during pre-construction nesting bird surveys, the qualified biologist should thoroughly search for ground, cavity, and canopy nesting species to ensure nesting birds do not go undetected during surveys. If a delay in Project construction of greater than 7 days occurs during the nesting season (i.e., February 1 to August 31), another pre-construction survey, and implementation of other minimization measures outlined in Mitigation Measure IV-2 (if applicable), shall be conducted prior to resuming Project construction.

The above recommended mitigation measures would likely be required under the LSA Agreement for the Project, as applicable, if issued by CDFW.

## **REGULATORY REQUIREMENTS**

### ***California Endangered Species Act***

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the project has the potential to result in take of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings and a Statement of Overriding Consideration (SOC). The Lead Agency's SOC does not eliminate the project proponent's obligation to comply with CESA.

### ***Lake and Streambed Alteration***

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat.

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Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Pursuant to the MND, the Project will submit an LSA Notification for constructing a storm drain outfall into Llama Creek. The LSA Notification should also include impacts to the on-site ephemeral drainage described above. Any associated impacts to riparian vegetation resulting from the above Project activities should also be included in the LSA Notification. CDFW must execute a final, signed LSA Agreement before the abovementioned Project activities may begin, unless otherwise approved by CDFW.

### ***Migratory Birds and Raptors***

CDFW has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Fully protected species may not be taken or possessed at any time (Fish and Game Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

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CDFW appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at [Garrett.Allen@wildlife.ca.gov](mailto:Garrett.Allen@wildlife.ca.gov); or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse # 2021050607

#### **REFERENCES CITED**

Napa County Resource Conservation District. *Understanding Napa County Watersheds – An Introduction to Riparian Areas.*